was his private property. A further ground for not imposing any prison sentence or substantial fine is that the respondent is 18 years old, and a heavy fine on a person attempting to earn an honest living may result in his imprisonment in default, or payment of the fine on his behalf by innocent relatives.

After careful consideration, I am satisfied that his pleading guilty had been made under a misconception of the powers of police constables before (as distinct from after) they made a proper arrest. Acting therefore under my powers of revision, I feel that it is right and proper that I set aside the conviction on the second charge and quash the order made under section 294 of the Criminal Procedure Code. Justice must not only be done but must be seen to have been done.

Conviction set aside.

PACKEER MOHAMED & ANOR. v. YEO CHING TAY

[A.C.J. (Ong J.) September 29, 1963]

[K.L. — Civil Appeal No. 11 of 1963]

Landlord and Tenant—Eviction of trespasser—Length of notice—Whether once when valid notice to quit given new tenancy created by subsequent notice to quit—Control of Rent Ordinance, 1956.

A calendar month's notice to quit is not required if a landlord wishes to evict a trespasser.

When a valid notice has been given a new tenancy can be created only by an express or implied agreement. A subsequent notice to quit is of no effect unless other circumstances form the basis for inferring a new tenancy having been created after the expiry of the first notice: *Loewenthal* v. *Vanhoute & Anor.*(1) followed.

Case referred to:—

(1) *Loewenthal* v. *Vanhoute & Anor.* [1947] 1 All E.R. 116.

CIVIL APPEAL.

N. A. Marjoribanks for the appellants.

S. T. Chung for the respondent.

Cur Adv. Vult.

Ong J.: This is an appeal by the occupier of rent-controlled premises against an order for possession made by the Magistrate, Kuala Lumpur, in favour of the landlord and for payment of double rent from April 1, 1963 till delivery of vacant possession. The learned Magistrate made the order on two grounds: first, that the former occupier Subramaniam was a statutory tenant and as such had no right or interest which he could assign to the appellant; secondly, that continued acceptance of rent by the landlord from his statutory tenant did not convert the statutory tenancy into a contractual tenancy.

The facts disclosed in the evidence are clear beyond any possibility of dispute. The landlord plaintiff is a Chinese lady who has been resident for some time in the United Kingdom. Her affairs in this country have been managed since 1949 by her son under a power of attorney. He had been her agent and rent-collector of the premises in question as well as others owned by his mother. Some time before 1950, a Sikh subtenant of the ground floor of the premises became a direct tenant thereof upon the ejectment of the principal tenant for non-payment of rent. This Sikh was carrying on business under the name or style of Khalsa Flour Mills and rent receipts were issued to him under such trade name. Payment of rent at all times was tendered at the landlord's premises by the Sikh tenant. Accordingly when a Tamil man named Subramaniam came instead in November 1953 to tender rent, the landlord's son and attorney refused to accept the rent from him and promptly sent him a notice to quit (Ex.P2). The former Sikh tenant was not prohibited by the terms of his tenancy from assigning it to Subramaniam, and since the latter had lawfully taken over the Khalsa Flour Mills business, the landlord was prevented by the then Control of Rent Ordinance from taking any proceedings to recover possession. Nevertheless the notice did have the legal effect of making Subramaniam a statutory tenant, and he continued trading under the same firm name 'The Khalsa Flour Mills' (see Ex.P3 dated March 27, 1957).

It is of the greatest significance to note that in this letter of March 27, 1957, Subramaniam took pains expressly to remind his landlord: "You need not call on any one or on the premises for this rent. The same will be sent to you at the above address (i.e. the landlord's home) regularly." It was signed "For Khalsa Flour Mills, S. Subramaniam, Proprietor". Subramaniam then was of course fully aware that he held no better rights to remain in occupation than those of a statutory tenant. He had known what his legal rights were when he and A. Abdul Majeed, the present appellant, consulted a well-known and able advocate and solicitor in Kuala Lumpur and instructed him to draw up an agreement of sale of the business of the Khalsa Flour Mills on December 20, 1955 (Ex. D.14).

In that agreement the recital stated (1) that the vendor Subramaniam was the owner of the flour mill business carried on under the name and style of Khalsa Flour Mills; (2) that the tenancy of the whole ground floor "is in the name of the said business"; (3) that the vendor has

agreed to sell and the purchasers have agreed to purchase free from all encumbrances the said business, its goodwill etc. for the sum of $10,000. Then followed the operative clauses of which the relevant ones are:

1. The Vendor shall sell and the Purchasers shall purchase free from all encumbrances all the said business, its goodwill and the said furniture and fittings.

4. On full payment of tender of any balance of the purchase price the Vendor shall within fourteen (14) days of such payment or tender execute a valid transfer of all the said business, its goodwill and the said furniture and fittings to the purchasers free from all encumbrances.

5. From the date of this agreement the purchasers shall be entitled to occupy the whole of the said ground floor and to take possession of the said business, its licences and the said furniture and fittings and to carry on the said business.

6. The Purchasers shall be entitled to all the profits derived from the said business after the date of this agreement.

7. The Vendor shall be liable to all the debts and liabilities incurred by the said business prior to the date of this agreement.

8. The purchasers shall bear all debts and liabilities incurred by the said business after the date of this agreement.

9. From the date of this agreement the Vendor shall not carry on any business under the name and style of Khalsa Flour Mill.

10. Until the execution by the Vendor of a valid transfer of the said business its goodwill and the said furniture and fittings to the Purchasers the Vendor shall pay to the said Yeo Ching Tay the rent for the said ground floor and shall be liable for the same.

11. If through any fault or instigation of the Vendor the Khalsa Four Mill is ejected from the said ground floor by the said Yeo Ching Tay or her representatives the Vendor shall pay to the Purchasers the sum of $5,500 (Dollars five thousand and five hundred) as agreed liquidated damages.

12. If through any fault or instigation of the Purchasers the Khalsa Flour Mill is ejected from the said ground floor by the said Yeo Ching Tay or her representatives before it is transferred to the Purchasers all money already paid by the Purchasers to the Vendor at the time of such ejectment shall be forfeited unto the Vendor and the Purchasers shall also pay to the Vendor as agreed liquidated damages the balance of the purchase price than due from the Purchasers to the Vendor.

13. If before the execution by the Vendor of a valid transfer of the said business, its goodwill and the said furniture and fittings to the Purchasers any dispute were to arise with the said Yeo Ching Tay or her representatives over the tenancy of the said ground floor the Vendor shall be liable for all expenses incurred in settling any such dispute.

The sale of the business was completed on June 24, 1959, (see Ex.D.15). Between December 20, 1955 and June 24, 1959, however, Subramaniam had parted entirely with his business and with his possession of the premises, while retaining only his nominal legal title to the latter. During such time the permissive occupation of the appellant as occupier pending completion was, in my opinion, that of an agent or licensee for valuable consideration, but from and after June 24, 1959, it is clear that Subramaniam could no longer be the licensor, nor could he retain any colour or shadow of right in the premises, nor could he act for or use the name of Khalsa Flour Mills. As to the business of Khalsa Flour Mills, clauses 5, 6, 7 and 8 of Ex.D.14 provide irrefutable proof that by his letter of March 27, 1957 (Ex.P3), Subramaniam was practising an active deception on his landlord to conceal his transfer both of the business and of his tenancy.

I came next to Subramaniam's letter of January 13, 1958 to the landlord (Ex.P4) tendering rent of the premises. The landlord's attorney noticed by the signature that "somebody else other than Subramaniam tried to pay the rent." Consequently he replied on January 22, 1958 (see Ex.P5) asking "in what capacity the signatory of the letter is writing for the Khalsa Flour Mills." To that letter he received the reply (Ex.P6) dated February 22, 1958 stating "I am the attorney of Subramaniam, alias S. Subramaniam son of Suppiah Pillai, the proprietor of the Khalsa Flour Mills, and I have been signing letters in the capacity of an attorney, No. 1325/57 dated 30.12.1957". I have looked at the signatures on Ex.P4 and Ex.P6 and I see the former was not signed by Suppiah "as attorney" of Subramaniam. The Power of Attorney No. 1325/57 unfortunately was not produced in evidence, but even so, the inescapable fact remains that on December 12, 1957, the donor of the power was no longer in truth the proprietor of Khalsa Flour Mills.

To carry the inquiry a stage further, I now refer to the landlord's letter (Ex.P7) dated June 18, 1961 returning the rent tendered "as the person who signed the letters is not known to me". The reply thereto is dated June 27, 1958 (Ex.P8) "from Khalsa Flour Mills" stating "that the person who signed the letters is the same person who has been paying you the rent since 1955". Such statement is manifestly a lie, because it was not signed even by Suppiah the attorney of Subramaniam, but by the appellant's agent or manager (see the signatures on Ex. P17). Why the circumlocution and evasiveness? Subramaniam himself only signed until he gave his power of attorney to Suppiah, who signed as Subramaniam's attorney after December 27, 1957 (see Para 3 in Ex.P6). After completion of the transfer on June 24, 1959, neither Subramaniam nor Suppiah, as his attorney, could continue paying rent in the purported capacity of tenant. Under clause 10 of Ex.D.14 Subramaniam was only liable for rent until completion of transfer. His continuing after June

24, 1959, to pay rent out of his own pocket either by himself or his so-called attorney — assuming the statement in Ex.P8 to be true — must be in pursuance of an active deception to which the appellant was a knowing party providing the rent moneys to Subramaniam. A final touch which showed that the appellant was not telling the truth is to be seen in his evidence as follows:

"I put up my signboard in 1955 as soon as D14 was signed. I took down the Khalsa Flour Mill sign as soon as I entered the premises and put up our signboard. *After signing D14 our man paid the rent not Subramaniam.*"

Later in cross-examination he said:

As soon as I signed D14 I put up my signboard and took down Khalsa Flour Mill's signboard and this is correct. I did inform my solicitors about this. Letter from Defendant's solicitor to Plaintiff's solicitor produced and marked (P16), this letter saying that we took down the board in 1959 is incorrect. We never tendered rent by letter but by a messenger. When Plaintiff refused to accept rent I sent the rent by money order accompanied by a letter and signed as T.A. Packeer Mohamed & A. Majeed. I have never signed as Khalsa Flour Mills. Six letters written to Plaintiff enclosing money order for rent produced, identified and marked (P17). I don't recognise the signature probably they were signed by the then managers."

Even until October 9, 1961, the appellant still persisted in trying to pull the wool over the landlord's eyes by using the round seal of Khalsa Flour Mills.

For the reasons set out above, and after carefully considering the evidence of the plaintiff's attorney, I am more than satisfied that he was telling the truth, the whole truth and nothing but the truth. I am satisfied that at all times since the date of the notice (Ex.P2) the plaintiff's attorney was diligent and careful to see that he should not by any oversight permit any third party to take over Subramaniam's place in the premises. His concern on this point negatives any intention of giving Subramaniam a contractual tenancy; moreover the notice Ex.P3 was never revoked. Finally, the notice of increase of rent dated December 1, 1960 (Ex.P13) was sent, and increases accepted, while the landlord's attorney in good faith believed in the truth of the active misrepresentations of the appellant that Subramaniam, and no one else but Subramaniam, was the party with whom the landlord was contracting for a fresh tenancy at the increased rent. Consequently there never was any contract between the appellant and the landlord resulting from the tender and acceptance of rent until such time as the landlord's agent became aware of the deception. The appellant was thus a trespasser, and a calendar month's notice is not required by law. As to the submission that a second notice invalidated the first, the law is clearly laid down in *Loewenthal* v. *Vanhoute & anor.*[1] where Denning J. (as he then was) said:

"When a valid notice has been given, a new tenancy can be created only by an express or implied agreement. A subsequent notice to quit is of no effect unless other circumstances form the basis for inferring a new tenancy having been created after the expiry of the first notice .... The mere fact that a solicitor, in order to get possession, gave another notice to quit, is not, in my judgment, any reason for inferring any agreement for a new tenancy."

I express no regrets in coming to the conclusion I do, and in dismissing this appeal because this is one instance of many where the landlord has been the subject of heartless victimisation by persons practising fraud and deception under the protective umbrella of the law of rent control. The appellant fully deserves to be penalised in costs of this appeal because of his dishonest conduct. He will pay such costs as taxed.

Appeal dismissed.

Solicitors:—*Lovelace & Hastings; Chung & Huang.*

AU AH LIN v. PUBLIC PROSECUTOR

[F.C. (Thomson, Lord President, Wee Chong Jin C.J. (Singapore), & Wylie C.J. (Borneo) October 1, 1963]

[K.L. — Federal Court Criminal Reference No. 1 of 1963]

Evidence—Credibility—Questions of —No justification for interference—Evidence Ordinance, 1950, s.24.

Excise—Samples of seized goods—Excise Act, 1961, ss.17(1), 61 & 75(1)(a).

The appellant was charged under sections 17(1) and 75(1)(a) of the Excise Act. The evidence for the prosecution depended largely on statements made by the appellant to a Revenue Officer. It also included findings by an analyst as to the nature of the contents of a number of receptacles found on the premises. That evidence made out that the contents were excisable liquor. There were two grounds of appeal: (1) the evidence of the Revenue Officer as to the statements made by the appellant was wrongly admitted contrary to section 24, Evidence Ordinance, (2) there was no compliance with the provision of section 61 of the Excise Act.

Held: (1) the admissibility of the evidence was a question of fact which rested on questions of credibility. In this case the questions of credibility were decided against the appellant by the learned Magistrate and there is no authority to justify the appellate court in interfering;

(2) section 61 of the Excise Act does not require that samples be taken of the contents of every package or container which is in question. The samples should be 10% of the packages or containers and when that is done the presumption mentioned in the section as to the contents of all the packages arises. The section does not require the taking of any particular quantity. The words "ten per centum" refer to the packages, not to the contents of each package.

Case referred to:—

(1) *Chye Ah San* v. *Regina* [1954] M.L.J. 217, 219.